

AMENDED IN ASSEMBLY MAY 30, 2001

AMENDED IN ASSEMBLY MAY 9, 2001

AMENDED IN ASSEMBLY APRIL 17, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 81

Introduced by Assembly Members Migden and Aroner
(Coauthors: Assembly Members Alquist and Goldberg) Member
Migden

January 4, 2001

An act to ~~amend Section 6203 of~~ *add Section 721.5 to* the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 81, as amended, Migden. ~~Sales and use taxes: retailer~~ *Property taxation: state-assessed property.*

The California Constitution requires the State Board of Equalization to assess the property, other than franchises, of companies transmitting or selling gas or electricity. Existing regulations require the board to assess an electric generation facility, for purposes of this constitutional provision, only if (1) the facility was constructed pursuant to a certificate of public convenience and necessity issued by the California Public Utilities Commission to the company that presently owns the facility or (2) the company owning the facility is a state assessee for reasons other than its ownership of the generation facility or its ownership of pipelines, flumes, canals, ditches, or aqueducts lying within 2 or more counties.

This bill would require the board to annually assess every electric generation facility with a generating capacity of 50 megawatts or more that is owned by an electrical corporation, as defined. This bill also would invalidate any existing regulations that are in conflict with the bill's provisions.

~~The Sales and Use Tax Law imposes a tax on the gross receipts from the sale in this state of, or the storage, use, or other consumption in this state of, tangible personal property. That law imposes the sales tax upon “retailers,” and defines a “retailer engaged in business in this state” to include specified entities. Existing law provides that every retailer engaged in business in this state and making sales of tangible personal property for storage, use, or other consumption in this state, that engages in specified activity in this state shall, at the time of sale or at the time the storage, use, or other consumption becomes taxable, collect the tax from the purchaser.~~

This bill would clarify that the processing of orders electronically, by fax, telephone, the Internet, or other electronic ordering process, does not relieve a retailer of responsibility for collection of the tax from the purchaser if the retailer is engaged in business in this state.

~~This bill would also clarify that a retailer is presumed to have an agent within the state if the retailer is related, as specified, to a retailer maintaining sales locations in this state, provided the retailer sells similar products under a similar name as the California retailer, or facilities or employees of the related California retailer are used to advertise or promote sales by the retailer to California purchasers.~~

~~This bill would state the intent of the Legislature in enacting the bill and would specify that the provisions are intended to prospectively clarify existing law.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. Section 6203 of the Revenue and Taxation Code~~
- 2 *SECTION 1. Section 721.5 is added to the Revenue and*
- 3 *Taxation Code, to read:*
- 4 *721.5. (a) Notwithstanding Section 721 or any other*
- 5 *provision of law to the contrary, the board shall annually assess*
- 6 *every electric generation facility with a generating capacity of 50*
- 7 *megawatts or more that is owned or operated by an electrical*

1 corporation, as defined in subdivision (a) of Section 218 of the
2 Public Utilities Code.

3 (b) This section shall be construed to supersede any regulation,
4 in existence as of the effective date of this section, that is contrary
5 to this section.

6 is amended to read:

7 ~~6203.—(a) Except as provided by Sections 6292 and 6293,~~
8 ~~every retailer engaged in business in this state and making sales of~~
9 ~~tangible personal property for storage, use, or other consumption~~
10 ~~in this state, not exempted under Chapter 3.5 (commencing with~~
11 ~~Section 6271) or Chapter 4 (commencing with Section 6351),~~
12 ~~shall, at the time of making the sales or, if the storage, use, or other~~
13 ~~consumption of the tangible personal property is not then taxable~~
14 ~~hereunder, at the time the storage, use, or other consumption~~
15 ~~becomes taxable, collect the tax from the purchaser and give to the~~
16 ~~purchaser a receipt therefor in the manner and form prescribed by~~
17 ~~the board.~~

18 ~~(b) As respects leases constituting sales of tangible personal~~
19 ~~property, the tax shall be collected from the lessee at the time~~
20 ~~amounts are paid by the lessee under the lease.~~

21 ~~(c) “Retailer engaged in business in this state” as used in this~~
22 ~~section and Section 6202 means and includes any of the following:~~

23 ~~(1) Any retailer maintaining, occupying, or using, permanently~~
24 ~~or temporarily, directly or indirectly, or through a subsidiary or~~
25 ~~agent, by whatever name called, an office, place of distribution,~~
26 ~~sales or sample room or place, warehouse or storage place, or other~~
27 ~~place of business.~~

28 ~~(2) Any retailer having any representative, agent, salesperson,~~
29 ~~canvasser, independent contractor, or solicitor operating in this~~
30 ~~state under the authority of the retailer or its subsidiary for the~~
31 ~~purpose of selling, delivering, installing, assembling, or the taking~~
32 ~~of orders for any tangible personal property.~~

33 ~~(3) As respects a lease, any retailer deriving rentals from a lease~~
34 ~~of tangible personal property situated in this state.~~

35 ~~(4) (A) Any retailer soliciting orders for tangible personal~~
36 ~~property by mail if the solicitations are substantial and recurring~~
37 ~~and if the retailer benefits from any banking, financing, debt~~
38 ~~collection, telecommunication, or marketing activities occurring~~
39 ~~in this state or benefits from the location in this state of authorized~~
40 ~~installation, servicing, or repair facilities.~~

~~(B) This paragraph shall become operative upon the enactment of any congressional act that authorizes states to compel the collection of state sales and use taxes by out-of-state retailers.~~

~~(5) Notwithstanding Section 7262, a retailer specified in paragraph (4) above, and not specified in paragraph (1), (2), or (3) above, is a “retailer engaged in business in this state” for the purposes of this part and Part 1.5 (commencing with Section 7200) only.~~

~~(d) (1) For purposes of this section, “engaged in business in this state” does not include the taking of orders from customers in this state through a computer telecommunications network located in this state which is not directly or indirectly owned by the retailer when the orders result from the electronic display of products on that same network. The exclusion provided by this subdivision shall apply only to a computer telecommunications network that consists substantially of online communications services other than the displaying and taking of orders for products.~~

~~(2) This subdivision shall become inoperative upon the operative date of provisions of a congressional act that authorize states to compel the collection of state sales and use taxes by out-of-state retailers.~~

~~(e) Except as provided in this subdivision, a retailer is not a “retailer engaged in business in this state” under paragraph (2) of subdivision (c) if that retailer’s sole physical presence in this state is to engage in convention and trade show activities as described in Section 513(d)(3)(A) of the Internal Revenue Code, and if the retailer, including any of his or her representatives, agents, salespersons, canvassers, independent contractors, or solicitors, does not engage in those convention and trade show activities for more than 15 days, in whole or in part, in this state during any 12-month period and did not derive more than one hundred thousand dollars (\$100,000) of net income from those activities in this state during the prior calendar year. Notwithstanding the preceding sentence, a retailer engaging in convention and trade show activities, as described in Section 513(d)(3)(A) of the Internal Revenue Code, is a “retailer engaged in business in this state,” and is liable for collection of the applicable use tax, with respect to any sale of tangible personal property occurring at the convention and trade show activities and with respect to any sale~~

1 of tangible personal property made pursuant to an order taken at
2 or during those convention and trade show activities.

3 (f) Any limitations created by this section upon the definition
4 of “retailer engaged in business in this state” shall only apply for
5 purposes of tax liability under this code. Nothing in this section is
6 intended to affect or limit, in any way, civil liability or jurisdiction
7 under Section 410.10 of the Code of Civil Procedure.

8 (g) (1) The processing of orders electronically, by fax,
9 telephone, the Internet, or other electronic ordering process, does
10 not relieve a retailer of responsibility for collection of the tax from
11 the purchaser if the retailer is engaged in business in this state
12 pursuant to this section.

13 (2) For purposes of this section, a retailer is presumed to have
14 an agent within the state, as defined in paragraphs (1) and (2) of
15 subdivision (c), if both of the following conditions exist:

16 (A) The retailer holds a substantial ownership interest, directly
17 or through a subsidiary, in a retailer maintaining sales locations in
18 California or is owned in whole or in substantial part by such a
19 retailer, or by a parent or subsidiary thereof. For purposes of this
20 subparagraph, “substantial ownership interest” in an entity means
21 that degree of ownership of equity interests in an entity that is not
22 less than that degree of ownership specified by Section 78p of Title
23 15 of the United States Code, or any successor to that statute, with
24 respect to a person other than a director or officer.

25 (B) The retailer sells the same or substantially similar line of
26 products as the retailer maintaining sales locations in California
27 under the same or substantially similar business name, or facilities
28 or employees of the related retailer located in this state are used to
29 advertise or promote sales by the retailer to California purchasers.

30 SEC. 2. The Legislature finds and declares all of the
31 following:

32 (a) The amendment to Section 6203 of the Revenue and
33 Taxation Code by this act is intended to prospectively clarify
34 existing law.

35 (b) This amendment is necessary in order to prospectively
36 clarify that a retailer that is engaged in business in the state cannot
37 be relieved of the nexus created by its location in the state through
38 use of an affiliate, subsidiary, or related company, the purpose of
39 which is to engage in similar transactions through the processing
40 of orders by electronic means.

1 ~~(c) In amending Section 6203 of the Revenue and Taxation~~
2 ~~Code in this act, it is not the intent of the Legislature to in any way~~
3 ~~extend or broaden the definition of retailer engaged in business in~~
4 ~~the state, but solely to prospectively clarify the definition for use~~
5 ~~by all retailers. Also, it is not the intent of the Legislature in~~
6 ~~amending Section 6203 of the Revenue and Taxation Code in this~~
7 ~~act to affect, in any way, any investigation, audit, or other~~
8 ~~enforcement action by the State Board of Equalization that has~~
9 ~~been initiated prior to January 1, 2002.~~

10 ~~(d) In defining the term “substantial ownership interest” on the~~
11 ~~basis of standards set forth in federal law, it is the intent of the~~
12 ~~Legislature to incorporate those longstanding parameters of~~
13 ~~federal securities law that identify those principal stockholders of~~
14 ~~a legal entity that may fairly be equated with persons exerting a~~
15 ~~substantial influence over that entity.~~

16 ~~(e) Pursuant to Section 3.5 of Article III of the California~~
17 ~~Constitution, the Legislature hereby directs the State Board of~~
18 ~~Equalization to fully enforce this act.~~

